

## 2003 DRAFTING REQUEST

### Bill

Received: 12/10/2002

Received By: pkahler

Wanted: As time permits

Identical to LRB:

For: Terry Musser (608) 266-7461

By/Representing: Kathie

This file may be shown to any legislator: NO

Drafter: pkahler

May Contact:

Addl. Drafters:

Subject: Dom. Rel. - child support

Extra Copies:

Submit via email: YES

Requester's email: Rep.Musser@legis.state.wi.us

Carbon copy (CC:) to:

### Pre Topic:

No specific pre topic given

### Topic:

Calculating child support

### Instructions:

See Attached

### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 12/11/2002	jdye 01/14/2003					S&L
		jdye 01/15/2003					
/1			rschluet 01/17/2003		mbarman 01/17/2003		S&L

03/25/2003 09:04:22 AM

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/2	pkahler 02/20/2003	jdye 02/20/2003	chaskett 02/21/2003		sbasford 02/24/2003		S&L
	pkahler 02/24/2003	jdye 02/21/2003	chaskett 02/24/2003				
/3	pkahler 02/28/2003	jdye 03/03/2003	rschluet 03/03/2003		sbasford 03/03/2003	mbarman 03/25/2003	

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Att intro.

<END>

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*Handwritten notes:*  
 13 2/3/04  
 3-3-3

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01/17/2003 01:32:21 PM

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FE Sent For:

1/15 jld  
(11)  
CPH  
<END>  
1-15-3

**Kahler, Pam**

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**From:** Rep.Musser  
**Sent:** Tuesday, December 10, 2002 2:10 PM  
**To:** Kahler, Pam  
**Subject:** Oops...

Hi, Pam ... I am so sorry, but I may or may not have just emailed a draft request to you from Terry (AB 449).

Please let me know if you got it ...

Thanks, Pam!

Kathie @ Rep Musser's Office  
6-7461

DUE TUES

Sections Affected Post-Drafting-Check For 01-3261/xx2

Wednesday, January 15, 2003 7:23 am

Current Wisconsin Statutes updated through 2001 Act 109

SECTION (Sub)(Par)

TREATMENT

AFFECTED BY

~~46.10(14)(b)~~ ✓

am.

Act 0059

~~71.26(1)(bm)~~ ✓

[see s. 50 of]

Act 0038

~~301.12(14)(b)~~ ✓

am.

Act 0059

~~767.23(1u)~~ ✓

am. effec. 6-1-2002

Act 0061

~~812.44(4)(form)2.~~

am.

Act 0038

~~812.44(5)(form)2.~~

am.

Act 0038

~~809.19(7)(c)~~

am. effec. 7-1-2001

SCO 00-02

~~938.363(1)(c)~~ ✓

am.

Act 0038



State of Wisconsin  
2001-2002 LEGISLATURE  
2003-2004

1107/1  
LRB-3001/2  
PJK:jld:pg

2003  
2001 ASSEMBLY BILL 440

June 21, 2001 - Introduced by Representatives MUSSER, AINSWORTH, PETTIS, F. LASEE, NASS, GUNDERSON, STONE and GUNDRUM, cosponsored by Senator GEORGE. Referred to Committee on Judiciary.

regenerate  
↓

1 AN ACT *to renumber and amend* 767.32 (2); *to amend* 46.10 (14) (b), 46.10 (14)  
2 (c) (intro.), 46.10 (14) (d), 46.247, 48.30 (6) (b), 48.31 (7) (b), 48.33 (4m) (intro.),  
3 48.357 (5m) (a), 48.363 (1) (c), 301.12 (14) (b), 301.12 (14) (c) (intro.), 301.12 (14)  
4 (d), 301.12 (14) (g), 767.085 (2) (b), 767.085 (2m) (a) 2., 767.085 (2m) (b), 767.23  
5 (1n), 767.25 (1j), 767.25 (1m) (intro.), 767.25 (1n), 767.295 (2) (c), 767.32 (1) (b)  
6 2., 767.32 (1) (b) 4., 767.32 (2m), 767.45 (7), 767.455 (6), 767.477 (2), 938.30 (6)  
7 (b), 938.31 (7) (b), 938.33 (4m) (intro.), 938.357 (5m) (a), 938.363 (1) (c), 948.22  
8 (4) (b) and 948.22 (7) (bm); *to repeal and recreate* 49.22 (9); and *to create*  
9 49.22 (10), 767.251, 767.32 (1) (b) 5., 767.32 (1) (b) 6., 767.32 (2) (b) and 767.325  
10 (5r) of the statutes; **relating to:** calculating child support and creating  
11 committees to review the method of calculating child support.

***Analysis by the Legislative Reference Bureau***

Under current law, in divorces, paternity actions, and other actions affecting the family in which child support is ordered, including actions to revise child support, the court must determine child support payments by using the percentage standard established by administrative rule by the department of workforce development

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(DWD). The percentage standard is a percentage of the payer's gross monthly income. The percentage of income that the child support payer must pay varies with the number of children to be supported. A payer must pay 17% of his or her gross income for one child, 25% for two children, 29% for three children, 31% for four children, and 34% for five or more children. Except in certain situations, the calculation of child support does not take into account the income of the payee or the amount of time that the payer cares for the child during periods of physical placement ordered by the court.

The rules provide for a special way <sup>in which</sup> ~~to calculate~~ child support <sup>with</sup> for a shared-time payer. If the payer has physical placement of a child between 31% and 40% of the time, based on the number of times per year that the parent provides overnight care for the child, the rules provide for a specified reduction in the amount of child support that the payer would be required to pay by calculating support by using the percentage standard alone. (For example, a payer with physical placement of a child for 37% of the time ~~pay~~ 76.69% of the amount that he or she would pay by calculating support by using the percentage standard alone.) <sup>under the rules</sup> if one parent has physical placement of a child between 41% and 59% of the time and the other parent has physical placement of the child for the remainder of the time, based on the number of times that each provides overnight care, the amount of child support that each parent would pay by using the percentage standard alone is calculated, reduced by a specified percentage depending on the amount of time each parent has physical placement of the child <sup>with</sup> ~~calculating support by~~ and compared with the other parent's similarly calculated and reduced amount of child support. (For example, a parent with physical placement of a child for 46% of the time would be obligated to pay 46.72% of the amount of child support that he or she would be obligated to pay by using the percentage standard alone while the other parent with physical placement for 54% of the time would be obligated to pay 20.08% of the amount calculated by using the percentage standard alone.) The parent with the larger calculated and reduced amount <sup>would</sup> ~~pay~~ pay the difference as child support to the other parent. <sup>in which</sup>

The rules also provide for a special way ~~to calculate~~ child support for a serial-family payer and for the imputation of income to a payer if the court determines that the payer has unproductive assets or has diverted income into assets to avoid paying child support. If a person who is already obligated to pay child support is later ordered to pay support for another child, from a later marriage or a paternity adjudication for example, the amount of support that the person ~~must~~ <sup>would</sup> pay under the later order is calculated by first reducing the payer's gross income by the amount under the first child support order and then applying the percentage standard to that reduced income amount. Income imputation involves multiplying the net value of the assets by the current six-month treasury bill rate or any other reasonable rate.

Under current law, a court is authorized, upon the request of a party, to modify the amount of child support that would be ordered by using the percentage standard. The court must find that use of the percentage standard is unfair to the child or either of the parties after considering a number of factors, such as the earning capacity of

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each parent, the desirability that the custodian remain in the home as a full-time parent, and extraordinary travel expenses incurred in exercising physical placement rights.

This bill changes the method of determining the amount of child support to be paid in actions affecting the family, including actions to revise child support. Under the bill, the court must determine each parent's gross income and percentage of physical placement with the child. The bill specifies what the court must include in income, what the court must exclude from income, and what the court must subtract from income in determining each parent's gross income. The bill requires the court to include in a parent's gross income wages that the court determines were paid to other family members for the purpose of diverting income. The court may impute income to a parent if the court determines that the parent has concealed or transferred assets for the purpose of avoiding child support or that the gross incomes of the parents will not adequately provide for the child and there are unproductive assets. The court must impute income based on a 40-hour work week to a parent who is not working at least 40 hours per week if the court determines that the parent is able to work and that work is available in the parent's community. The court determines the percentage of physical placement that a parent has on the basis of the number of days, rather than overnights, that a parent cares for the child in a year. If both parents care for the child on the same day, the court determines the amount of time that each parent cares for the child on that day on a basis that reflects each parent's proportionate share of the total expenses incurred for the child by both parents on that day.

After the court determines each parent's gross income and percentage of physical placement, the court determines each parent's gross monthly child support obligation ~~which is determined~~ depends on the combined gross monthly income of the two parents. If the combined gross monthly income of the two parents is equal to or less than \$4,000, each parent's gross monthly child support obligation is equal to the percentage standard under current law. That is, if there is one child, each parent's gross monthly child support obligation is 17% of his or her gross monthly income. If the combined gross monthly income of the two parents is greater than \$4,000, determining a parent's gross monthly child support obligation is a multi-step process. The court must first determine the combined gross monthly child support obligation of the two parents. For combined gross monthly incomes that do not exceed \$20,000, the combined gross monthly child support obligation of the two parents equals a specified amount, depending on the number of children, plus a specified percentage of the combined gross monthly income of the two parents above \$4,000. ~~For combined gross monthly incomes that exceed \$20,000, the combined gross monthly child support obligation of the two parents equals a specified amount, depending on the number of children, plus a specified percentage of the combined gross monthly income of the two parents above \$20,000.~~ Each parent's gross monthly child support obligation is the same percentage of the parents' combined gross monthly child support obligation as that parent's gross income is of the parents' combined gross income. ~~the parent's gross monthly child support obligation is reduced if the parent is subject to~~

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another child support order or is otherwise legally obligated to support one or more other children. ~~Under the bill, however,~~ parent's gross monthly child support obligation is reduced to a specified percentage of his or her gross monthly child support obligation, depending on the number of other children being supported.

~~rather than reduced by the amount of support being paid for the other children.~~  
After determining each parent's gross monthly child support obligation, the court determines which parent pays support to the other parent and the amount of support to be paid. If the court grants a parent fewer than 55 days of physical placement in a year, that parent pays the amount of his or her gross monthly child support obligation to the other parent. If the court grants at least 55 days of physical placement to each parent, the court multiplies each parent's gross monthly child support obligation by 1.4 and by the other parent's percentage of physical placement. The resulting amount is each parent's net monthly child support obligation. The parent with the larger net monthly child support obligation pays to the other parent the difference between the two net monthly child support obligations. As under current law, the court may upon request modify the amount of support that would be determined by using the method ~~of calculating child support provided for~~ in the bill, after considering the same factors as under current law and upon finding that use of the new method is unfair to the child or either of the parties.

The bill also makes a couple of changes related to revisions of child support orders. Under current law, the court may revise the amount of child support under an order only if the court finds that there has been a substantial change in circumstances. The court must use the percentage standard in revising the amount. The bill requires the new method of calculating child support to be used in a revision. Current law specifies a number of situations that constitute rebuttable presumptions of a substantial change in circumstances sufficient to justify a revision. Among those situations is the expiration of 33 months since the date of entry of the last support order, including a revision, unless the order is expressed as a percentage of income rather than as a specific amount. The bill changes this provision so that the expiration of 33 months since the date of entry of the last support order, including a revision, constitutes a rebuttable presumption of a substantial change in circumstances, regardless of how the order is expressed, if the amount of child support calculated by using the new method exceeds the amount under the last order by at least 10% of the amount under the last order or by at least \$40 per month. The bill also adds a new situation that constitutes a rebuttable presumption of a substantial change in circumstances: if the amount of child support last ordered was based on the amount of physical placement awarded to the parties, the payer has consistently failed to exercise his or her physical placement rights, and the amount of child support under a revised order, using the new method and based on the actual amount of physical placement that the payer has in the past exercised, exceeds the amount under the last order by at least 15% of the amount under the last order or by at least \$60 per month. Additionally, the bill requires a court to delay, until at least 30 days after an order modifying child support is signed, a decision on a parent's motion to modify physical placement if the court determines that the parent is seeking the physical placement modification in response to a motion to

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modify child support. The delay does not apply, however, if the parent seeking the physical placement modification presents any credible evidence that the current allocation of physical placement will cause irreparable harm to the child.

The bill requires DWD to prepare and make available to judges and other court personnel computer software, as well as tables and instruction manuals, to help with ~~calculating~~ <sup>under</sup> child support by the new method provided in the bill.

Finally, federal law requires each state to review, and revise if appropriate, its child support guidelines at least once every four years to ensure that they result in the determination of appropriate child support amounts. The bill requires the secretary of workforce development to create a child support review committee by January 1, 2002, and by January 1 every four years after that, to review the adequacy for supporting children of the new method of calculating child support provided in the bill. The committee must be composed of representatives of the judicial, executive, and legislative branches of state government; of the state bar, and of advocates for children, child support payers, and child support payees. Each committee created must report its findings and legislative recommendations to the joint legislative council and to the federal department of health and human services.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 46.10 (14) (b) of the statutes is amended to read:

46.10 (14) (b) Except as provided in par. (c) and subject to par. (cm), liability of a parent specified in sub. (2) or s. 46.03 (18) for the care and maintenance of the parent's minor child who has been placed by a court order under s. 48.355 or 48.357 in a residential, nonmedical facility such as a group home, foster home, treatment foster home, or child caring institution shall be determined by the court by using the percentage standard established by the department of workforce development under s. 49.22 (9) method of calculating child support under s. 767.251 and by applying the percentage standard method in the manner established by the department under s. 46.247.

SECTION 2. 46.10 (14) (c) (intro.) of the statutes is amended to read:

Insert 5-10 ✓



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## SECTION 2

1 46.10 (14) (c) (intro.) Upon request by a parent, the court may modify the  
2 amount of child support payments determined under par. (b), subject to par. (cm), if,  
3 after considering the following factors, the court finds by the greater weight of the  
4 credible evidence that the use of the <sup>plain</sup>percentage standard <sup>✓</sup>method of calculating child  
5 support under s. 767.251 is unfair to the child or to either of the parents:

6 SECTION 3. 46.10 (14) (d) of the statutes is amended to read:

7 46.10 (14) (d) If the court finds under par. (c) that use of the percentage  
8 standard <sup>✓</sup>method of calculating child support under s. 767.251 is unfair to the minor  
9 child or either of the parents, the court shall state in writing or on the record the  
10 amount of support that would be required by using the <sup>plain</sup>percentage standard <sup>✓</sup>method  
11 under s. 767.251, the amount by which the court's order deviates from that amount,  
12 its reasons for finding that use of the <sup>✓</sup>percentage standard <sup>✓</sup>method under s. 767.251  
13 is unfair to the child or the parent, its reasons for the amount of the modification, and  
14 the basis for the modification.

15 SECTION 4. 46.247 of the statutes is amended to read:

16 46.247 Application of method of calculating child support standard for  
17 certain children. For purposes of determining child support under s. 46.10 (14) (b),  
18 the department shall promulgate rules related to the application of the standard  
19 ~~established by the department of workforce development under s. 49.22 (9) method~~  
20 <sup>✓</sup>under s. 767.251 to a child support obligation for the care and maintenance of a child  
21 who is placed by a court order under s. 48.355 or 48.357 in a residential, nonmedical  
22 facility. The rules shall take into account the needs of any person, including  
23 dependent children other than the child, whom either parent is legally obligated to  
24 support.

25 SECTION 5. 48.30 (6) (b) of the statutes is amended to read:

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1 48.30 (6) (b) If it appears to the court that disposition of the case may include  
2 placement of the child outside the child's home, the court shall order the child's  
3 parent to provide a statement of income, assets, debts, and living expenses to the  
4 court or the designated agency under s. 48.33 (1) at least 5 days before the scheduled  
5 date of the dispositional hearing or as otherwise ordered by the court. The clerk of  
6 court shall provide, without charge, to any parent ordered to provide a statement of  
7 income, assets, debts, and living expenses a document setting forth the percentage  
8 ~~standard established by the department of workforce development under s. 49.22 (9)~~  
9 method of calculating child support under s. 767.251 and the manner of its  
10 application established by the department of health and family services under s.  
11 46.247 and listing the factors that a court may consider under s. 46.10 (14) (c).

12 SECTION 6. 48.31 (7) (b) of the statutes is amended to read:

13 48.31 (7) (b) If it appears to the court that disposition of the case may include  
14 placement of the child outside the child's home, the court shall order the child's  
15 parent to provide a statement of income, assets, debts, and living expenses to the  
16 court or the designated agency under s. 48.33 (1) at least 5 days before the scheduled  
17 date of the dispositional hearing or as otherwise ordered by the court. The clerk of  
18 court shall provide, without charge, to any parent ordered to provide a statement of  
19 income, assets, debts, and living expenses a document setting forth the percentage  
20 ~~standard established by the department of workforce development under s. 49.22 (9)~~  
21 method of calculating child support under s. 767.251 and the manner of its  
22 application established by the department of health and family services under s.  
23 46.247 and listing the factors that a court may consider under s. 46.10 (14) (c).

24 SECTION 7. 48.33 (4m) (intro.) of the statutes is amended to read:

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## SECTION 7

1 48.33 (4m) SUPPORT RECOMMENDATIONS; INFORMATION TO PARENTS. (intro.) In  
2 making a recommendation for an amount of child support under sub. (4), the agency  
3 shall consider the factors that the court considers under s. 46.10 (14) (c) for deviation  
4 from the ~~percentage standard~~ method of calculating child support under s. 767.251.  
5 Prior to the dispositional hearing under s. 48.335, the agency shall provide the child's  
6 parent with all of the following:

7 SECTION 8. 48.357 (5m) (a) of the statutes is amended to read:

8 48.357 (5m) (a) If a proposed change in placement changes a child's placement  
9 from a placement in the child's home to a placement outside the child's home, the  
10 court shall order the child's parent to provide a statement of income, assets, debts,  
11 and living expenses to the court or the person or agency primarily responsible for  
12 implementing the dispositional order by a date specified by the court. The clerk of  
13 court shall provide, without charge, to any parent ordered to provide a statement of  
14 income, assets, debts, and living expenses a document setting forth the ~~percentage~~  
15 ~~standard established by the department of workforce development under s. 49.22 (9)~~  
16 method of calculating child support under s. 767.251 and the manner of its  
17 application established by the department of health and family services under s.  
18 46.247 and listing the factors that a court may consider under s. 46.10 (14) (c). If the  
19 child is placed outside the child's home, the court shall determine the liability of the  
20 parent in the manner provided in s. 46.10 (14).

21 SECTION 9. 48.363 (1) (c) of the statutes is amended to read:

22 48.363 (1) (c) If the proposed revision is for a change in the amount of child  
23 support to be paid by a parent, the court shall order the child's parent to provide a  
24 statement of income, assets, debts, and living expenses to the court and the person  
25 or agency primarily responsible for implementing the dispositional order by a date

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1 specified by the court. The clerk of court shall provide, without charge, to any parent  
2 ordered to provide a statement of income, assets, debts, and living expenses a  
3 document setting forth the ~~percentage standard established by the department of~~  
4 ~~workforce development under s. 49.22 (9)~~ ✓ method of calculating child support under  
5 s. 767.251 and the manner of its application established by the department of health  
6 and family services under s. 46.247 and listing the factors that a court may consider  
7 under s. 46.10 (14) (c).

8 SECTION 10. 49.22 (9) ✓ of the statutes is repealed and recreated to read:

9 49.22 (9) The department ✓ shall prepare and make available to judges and other  
10 court personnel forms, tables, computer software, and instruction manuals or other  
11 publications to aid in the calculation of child support by using the method under s.  
12 767.251. ✓

13 SECTION 11. 49.22 (10) ✓ of the statutes is created to read:

14 49.22 (10) (a) The secretary ✓ shall exercise his or her authority under s. 15.04  
15 (1) (c) to create, by January 1, ✓ ~~2004~~ → 2004, and by January 1 every 4 years thereafter, a child  
16 support committee to review the adequacy to support children of the method of  
17 calculating child support under s. 767.251. ✓ The committee shall consider current  
18 research and economic and case data, as well as any other relevant resources, on the  
19 cost of, and expenditures that are necessary for, raising children.

20 (b) The committee shall be composed of representatives of the state's judicial  
21 branch, legislative branch, executive branch, and state bar, and of advocates for  
22 children, child support payers, and child support payees.

23 (c) No later than January 1, ✓ ~~2004~~ → 2005, and no later than January 1 every 4 years  
24 thereafter, the committee shall report its findings and legislative and other

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## SECTION 11

1 recommendations to the joint legislative council and to the federal department of  
2 health and human services.

3 ~~SECTION 12.~~ 301.12 (14) (b) of the statutes is amended to read:

4 301.12 (14) (b) Except as provided in par. (c) and subject to par. (cm), liability  
5 of a parent specified in sub. (2) or s. 301.03 (18) for the care and maintenance of the  
6 parent's minor child who has been placed by a court order under s. 938.183, 938.355,  
7 or 938.357 in a residential, nonmedical facility such as a group home, foster home,  
8 treatment foster home, child caring institution, or juvenile correctional institution  
9 shall be determined by the court by using the percentage standard established by the  
10 department of workforce development under s. 49.22 (9) method of calculating child  
11 support under s. 767.251 and by applying the percentage standard method in the  
12 manner established by the department under par. (g).

13 SECTION 13. 301.12 (14) (c) (intro.) of the statutes is amended to read:

14 301.12 (14) (c) (intro.) Upon request by a parent, the court may modify the  
15 amount of child support payments determined under par. (b), subject to par. (cm), if,  
16 after considering the following factors, the court finds by the greater weight of the  
17 credible evidence that the use of the <sup>plain</sup> ~~percentage standard~~ method of calculating child  
18 support under s. 767.251 is unfair to the child or to either of the parents:

19 SECTION 14. 301.12 (14) (d) of the statutes is amended to read:

20 301.12 (14) (d) If the court finds under par. (c) that use of the percentage  
21 ~~standard~~ method of calculating child support under s. 767.251 is unfair to the minor  
22 child or either of the parents, the court shall state in writing or on the record the  
23 amount of support that would be required by using the <sup>plain</sup> ~~percentage standard~~ method  
24 under s. 767.251, the amount by which the court's order deviates from that amount,  
25 the court's reasons for finding that use of the ~~percentage standard~~ method under s.

Insert 10-12 ✓

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## ASSEMBLY BILL 449

1 767.251 is unfair to the child or the parent, the court's reasons for the amount of the  
2 modification, and the basis for the modification.

3 **SECTION 15.** 301.12 (14) (g) of the statutes is amended to read:

4 301.12 (14) (g) For purposes of determining child support under par. (b), the  
5 department shall promulgate rules related to the application of the standard  
6 ~~established by the department of workforce development under s. 49.22 (9) method~~  
7 under s. 767.251 to a child support obligation for the care and maintenance of a child  
8 who is placed by a court order under s. 938.183, 938.355, or 938.357 in a residential,  
9 nonmedical facility. The rules shall take into account the needs of any person,  
10 including dependent children other than the child, whom either parent is legally  
11 obligated to support.

12 **SECTION 16.** 767.085 (2) (b) of the statutes is amended to read:

13 767.085 (2) (b) The clerk of court shall provide without charge, to each person  
14 filing a petition requesting child support, a document setting forth the percentage  
15 ~~standard established by the department under s. 49.22 (9) method of calculating~~  
16 child support under s. 767.251 and listing the factors ~~which~~ <sup>✓</sup> that a court may consider  
17 under s. 767.25 (1m).

18 **SECTION 17.** 767.085 (2m) (a) 2. of the statutes is amended to read:

19 767.085 (2m) (a) 2. Shall be accompanied by a document, provided without  
20 charge by the clerk of court, setting forth the <sup>plain</sup> ~~percentage standard established by the~~  
21 ~~department under s. 49.22 (9) method of calculating child support under s. 767.251~~  
22 and listing the factors ~~which~~ <sup>✓</sup> that a court may consider under s. 767.25 (1m).

23 **SECTION 18.** 767.085 (2m) (b) of the statutes is amended to read:

24 767.085 (2m) (b) If service is by publication, notification regarding s. 948.31  
25 may consist of references to the statute numbers and titles, and information relating

## ASSEMBLY BILL 449

## SECTION 18

PDF 1 to the ~~percentage standard~~ method of calculating child support and the factors need  
2 not be provided.

3 **SECTION 19.** 767.23 (1n) of the statutes is amended to read:

4 767.23 (1n) Before making any temporary order under sub. (1), the court or  
5 family court commissioner shall consider those factors that the court is required by  
6 this chapter to consider before entering a final judgment on the same subject matter.  
7 In making a determination under sub. (1) (a) or (am), the court or family court  
8 commissioner shall consider the factors under s. ~~767.24~~ (5). If the court or family  
9 court commissioner makes a temporary child support order that deviates from the  
10 amount of support that would be required by using the ~~percentage standard~~  
11 ~~established by the department under s. 49.22 (9)~~ method of calculating child support  
12 under s. 767.251, the court or family court commissioner shall comply with the  
13 requirements of s. 767.25 (1n). A temporary order under sub. (1) may be based upon  
14 the written stipulation of the parties, subject to the approval of the court or the family  
15 court commissioner. Temporary orders made by the family court commissioner may  
16 be reviewed by the court as provided in s. 767.13 (6).

17 **SECTION 20.** 767.25 (1j) of the statutes is amended to read:

18 767.25 (1j) Except as provided in sub. (1m), the court shall determine child  
19 support payments by using the ~~percentage standard established by the department~~  
20 ~~under s. 49.22 (9)~~ method under s. 767.251.

21 **SECTION 21.** 767.25 (1m) (intro.) of the statutes is amended to read:

22 767.25 (1m) (intro.) Upon request by a party, the court may modify the amount  
23 of child support payments determined under sub. (1j) s. 767.251 if, after considering  
24 the following factors, the court finds by the greater weight of the credible evidence

## ASSEMBLY BILL 449

1 that use of the ~~percentage standard~~ method under s. 767.251<sup>✓</sup> is unfair to the child  
2 or to any of the parties:

3 **SECTION 22.** 767.25 (1n) of the statutes is amended to read:

4 767.25 (1n) If the court finds under sub. (1m) that use of the percentage  
5 standard method of calculating child support under s. 767.251 is unfair to the child  
6 or the requesting party, the court shall state in writing or on the record the amount  
7 of support that would be required by using the ~~percentage standard~~ method under  
8 s. 767.251, the amount by which the court's order deviates from that amount, its  
9 reasons for finding that use of the ~~percentage standard~~ method under s. 767.251<sup>✓</sup> is  
10 unfair to the child or the party, its reasons for the amount of the modification, and  
11 the basis for the modification.

12 **SECTION 23.** 767.251 of the statutes is created to read:

13 **767.251 Calculation of child support payments.** (1)<sup>✓</sup> **GROSS INCOME.** For  
14 purposes of determining a parent's gross income under this<sup>✓</sup> section, all of the  
15 following apply:

16 (a) The court shall include as income all of the following:

17 1. Subject to par. (b),<sup>✓</sup> all personal income considered gross income for federal  
18 income tax purposes.

19 2. Net proceeds from worker's compensation or other personal injury awards  
20 intended to replace income.

21 3. Income continuation benefits.

22 4. Voluntary deferred compensation or employee contributions to a  
23 profit-sharing<sup>✓</sup> or pension account.

24 5. Military allowances and veterans benefits.



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## SECTION 23

1           6. Undistributed income from a closely held corporation if all of the following  
2     apply:

3           a. The parent has a majority interest in the corporation.

4           b. The parent may exercise control over, or access the earnings of, the  
5     corporation.

6           7. Tax-exempt interest.

7           (b) The court shall exclude from income all of the following:

8           1. Onetime<sup>✓</sup> long-term capital gain income from the sale of individual passive  
9     investments.

10          2. Onetime capital gain income from the sale of the family home.

11          (c) The court shall subtract from income all of the following:

12          1. Any maintenance paid to the other parent or to a former spouse.

13          2. If the parent is self-employed,<sup>✓</sup> one-half of the unemployment tax that the  
14     parent pays.

15          3. Business expenses that are allowed as deductions for expenses for tax  
16     purposes.

17          4. Business expenses that are not allowed as deductions for expenses for tax  
18     purposes but that the court considers necessary for the production of income.

19          (d) The court shall include as income wages paid by the parent to a member of  
20     the parent's household that the court determines were paid for the purpose of  
21     diverting income to avoid paying child support.

22          (e) If the court determines that a party has encumbered, concealed, damaged,  
23     destroyed, transferred, or otherwise disposed of property for the purpose of avoiding  
24     payment of child support, or that child support based on the gross incomes of the  
25     parties will not adequately provide for the child and that the parties have

## ASSEMBLY BILL 449

1 nonproductive assets, the court may impute income to one or both parents from such  
2 property or assets by multiplying the value of the property or asset by the current  
3 6-month<sup>✓</sup> treasury bill interest rate and including the amount obtained in the gross  
4 income of the appropriate parent.

5 (f) If the court determines that a parent is able and available to work, that  
6 employment opportunities exist in the parent's community for which the parent is  
7 qualified, and that the parent is not working at least 40 hours per week, the court  
8 shall impute to the parent a gross income based on a 40-hour work week, the parent's  
9 educational attainment and work experience, and the type of employment  
10 opportunities in the parent's community for which the parent is qualified.

11 (2) AMOUNT OF PHYSICAL PLACEMENT.<sup>✓</sup> (a) For the purpose of determining child  
12 support payments under sub. (4),<sup>✓</sup> the court shall determine the amount of physical  
13 placement that a parent has on the basis of the number of days, or amount of time,  
14 out of a total of 365 days in a year, that the parent provides care for the child.

15 (b) Notwithstanding par. (a),<sup>✓</sup> if both parents provide care for the child in the  
16 same 24-hour period, the court shall determine the amount of time that each parent  
17 provides care for the child on that day not on the basis of the number of hours that  
18 each parent cares for the child but on a basis that reflects each parent's proportionate  
19 share of the total expenses incurred by the 2 parents in caring for the child on that  
20 day.

21 (c) After making any adjustments necessary to ensure that the total number  
22 of days in a year that the parents have physical placement <sup>with</sup> ~~of~~ the child equals 365,  
23 the court shall determine the percentage of the 365 days in a year that each parent  
24 has physical placement <sup>✓</sup> ~~of~~ <sup>with</sup> the child, and shall make any adjustments necessary to  
25 ensure that the total of those percentages equals 100%.

## ASSEMBLY BILL 449

## SECTION 23

1           (3) GROSS MONTHLY CHILD SUPPORT OBLIGATIONS. ✓ For the purpose of determining  
2 child support payments under sub. (4), ✓ the court shall determine the gross monthly  
3 child support obligation of each parent as follows:

4           (a) If the combined gross monthly income of the 2 parents is equal to or less than  
5 \$4,000, ✓ the gross monthly child support obligation of each parent equals the  
6 following percentage of that parent's gross monthly income:

- 7           1. If there is one minor child, 17%. ✓
- 8           2. If there are 2 minor children, 25%.
- 9           3. If there are 3 minor children, 29%.
- 10          4. If there are 4 minor children, 31%.
- 11          5. If there are 5 or more minor children, 34%.

12          (b) If the combined gross monthly income of the 2 parents is greater than ✓ \$4,000  
13 but not greater than \$20,000, ✓ the gross monthly child support obligation of each  
14 parent is calculated as follows:

15          1. The combined gross monthly child support obligation of the 2 parents equals  
16 the following amount:

17           a. If there is one ✓ minor child, \$680 plus 8.5% of the combined gross monthly  
18 income of the 2 parents in excess of \$4,000.

19           b. If there are 2 ✓ minor children, \$1,000 plus 12.5% of the combined gross  
20 monthly income of the 2 parents in excess of \$4,000.

21           c. If there are 3 ✓ minor children, \$1,160 plus 14.5% of the combined gross  
22 monthly income of the 2 parents in excess of \$4,000.

23           d. If there are 4 ✓ minor children, \$1,240 plus 15.5% of the combined gross  
24 monthly income of the 2 parents in excess of \$4,000.

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1 e. If there are 5 or more minor children, \$1,360 plus 17% of the combined gross  
2 monthly income of the 2 parents in excess of \$4,000.

3 2. The gross monthly child support obligation of each parent equals that  
4 parent's percentage of the combined gross income of the 2 parents multiplied by the  
5 applicable combined gross monthly child support obligation amount under subd. 1. ✓

6 (c) If the combined gross monthly income of the 2 parents is greater than  
7 \$20,000, ✓ the gross monthly child support obligation of each parent is calculated as  
8 follows:

9 1. The combined gross monthly child support obligation of the 2 parents equals  
10 the following amount:

11 a. If there is one minor child, \$2,040 plus 4% of the combined gross monthly  
12 income of the 2 parents in excess of \$20,000. ✓

13 b. If there are 2 minor children, \$3,000 plus 6% of the combined gross monthly  
14 income of the 2 parents in excess of \$20,000.

15 c. If there are 3 minor children, \$3,480 plus 7% of the combined gross monthly  
16 income of the 2 parents in excess of \$20,000.

17 d. If there are 4 minor children, \$3,720 plus 8% of the combined gross monthly  
18 income of the 2 parents in excess of \$20,000.

19 e. If there are 5 or more minor children, \$4,080 plus 9% of the combined gross  
20 monthly income of the 2 parents in excess of \$20,000.

21 2. The gross monthly child support obligation of each parent equals that  
22 parent's percentage of the combined gross income of the 2 parents multiplied by the  
23 applicable combined gross monthly child support obligation amount under ✓ subd. 1.

24 (d) Notwithstanding pars. (a), (b), and (c), ✓ if a parent is subject to another child  
25 support order or is otherwise legally obligated to support one or more other children,

## ASSEMBLY BILL 449

## SECTION 23

1 that parent's gross monthly child support obligation is the amount determined for  
2 that parent under par. (a), (b), or (c), multiplied by the following percentage:

- 3 1. If the number of other children the parent is obligated to support is one, 90%.
- 4 2. If the number of other children the parent is obligated to support is 2, 85%.
- 5 3. If the number of other children the parent is obligated to support is 3, 80%.
- 6 4. If the number of other children the parent is obligated to support is 4 or more,  
7 75%.

8 (4) AMOUNT OF PAYMENTS. The court shall determine child support payments  
9 as follows:

10 (a) *In sole placement cases.* If the court grants periods of physical placement  
11 to only one parent, or if the court grants periods of physical placement to both parents  
12 but one parent has physical placement ~~of~~ <sup>with</sup> the child for fewer than 55 days in a year,  
13 the parent with less or no physical placement shall pay to the other parent the gross  
14 monthly child support obligation determined for that payer parent under sub. (3).

15 (b) *In shared placement cases.* If the court grants periods of physical placement  
16 to both parents and each parent has physical placement ~~of~~ <sup>with</sup> the child for at least 55  
17 days in a year, the court shall determine child support payments in the following  
18 manner:

19 1. Each parent's gross monthly child support obligation determined under sub.  
20 (3) shall be multiplied by 1.4 and by the other parent's percentage of physical  
21 placement determined under sub. (2) (c). The product under this subdivision for each  
22 parent is that parent's net monthly child support obligation.

23 2. Except as provided in subd. 3., the parent with the greater net monthly child  
24 support obligation under subd. 1. shall pay as child support, to the parent with the

## ASSEMBLY BILL 449

1 smaller net monthly child support obligation under subd. 1., the difference between  
2 those net monthly child support obligations.

3 3. If the amount of child support that a parent is obligated to pay under subd.  
4 2. is greater than his or her gross monthly child support obligation determined under  
5 sub. (3), that parent shall pay as child support to the other parent the amount of his  
6 or her gross monthly child support obligation determined under sub. (3).

7 (c) *In 3rd-party placement cases.* If a child is placed outside his or her home  
8 in a residential, nonmedical facility, the child support obligation of each parent shall  
9 be his or her gross monthly child support obligation, as determined under sub. (3).

10 (d) *In split placement cases.* If there is more than one child, if the amount of  
11 physical placement that a parent has with one or more of the children is not the same  
12 as the amount that the parent has with one or more of the other children, and if the  
13 court determines that each parent is required to pay child support to the other parent  
14 under par. (a) or (b) 2. or 3., the court shall require only the parent who is required  
15 to pay the greater amount to pay child support, and to pay only the difference in the  
16 amounts, to the other parent.

17 SECTION 24. 767.295 (2) (c) of the statutes is amended to read:

18 767.295 (2) (c) If the court enters an order under par. (a), it shall order the  
19 parent to pay child support equal to the amount determined by applying the  
20 ~~percentage standard established under s. 49.22 (9)~~ method under s. 767.251 to the  
21 income a person would earn by working 40 hours per week for the federal minimum  
22 hourly wage under 29 USC 206 (a) (1) or equal to the amount of child support that  
23 the parent was ordered to pay in the most recent determination of support under this  
24 chapter. The child support obligation ordered under this paragraph continues until  
25 the parent makes timely payment in full for 3 consecutive months or until the person

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## ASSEMBLY BILL 449

## SECTION 24

1 participates in the program under s. 49.36 for 16 weeks, whichever comes first. The  
2 court shall provide in its order that the parent must make child support payments  
3 calculated under s. 767.25 (1j) ~~or (1m)~~ or 767.251 after the obligation to make  
4 payments ordered under this paragraph ceases.

5 SECTION 25. 767.32 (1) (b) 2. of the statutes is amended to read:

6 767.32 (1) (b) 2. ~~Unless the amount of child support is expressed in the~~  
7 ~~judgment or order as a percentage of parental income, the~~ The expiration of 33  
8 months after the date of the entry of the last child support order, including a revision  
9 of a child support order under this section, if the amount of child support under the  
10 revised order by using the method of calculating child support under s. 767.251 will  
11 differ from the amount under the last order by at least 10% of the amount under the  
12 last order or by at least \$40 per month.

13 SECTION 26. 767.32 (1) (b) 4. of the statutes is amended to read:

14 767.32 (1) (b) 4. ~~A~~ If the action in which the court most recently ordered child  
15 support, including a revision of a child support order under this section, was  
16 commenced before the effective date of this subdivision.... [revisor inserts date], a  
17 difference between the amount of child support ordered by the court to be paid by the  
18 payer and the amount that the payer would have been required to pay based on the  
19 percentage standard established by the department under s. 49.22 (9), ~~2001~~ <sup>2001</sup> stats.,  
20 if the court did not use the percentage standard in determining the child support  
21 payments and did not provide the information required under s. 46.10 (14) (d), 301.12  
22 (14) (d), or 767.25 (1n), whichever is appropriate.

23 SECTION 27. 767.32 (1) (b) 5. of the statutes is created to read:

24 767.32 (1) (b) 5. If the action in which the court most recently ordered child  
25 support, including a revision of a child support order under this section, was

## ASSEMBLY BILL 449

1 commenced on or after the effective date of this subdivision<sup>✓</sup>.... [revisor inserts date],  
2 a difference between the amount of child support ordered by the court to be paid by  
3 the payer and the amount that the payer would have been required to pay based on  
4 the method of calculating child support under s. 767.251 if the court did not use that  
5 method in determining the child support payments and did not provide the  
6 information required under s. 46.10 (14) (d)<sup>✓</sup>, 301.12 (14) (d)<sup>✓</sup>, or 767.25 (1n)<sup>✓</sup>, whichever  
7 is appropriate.

8 **SECTION 28.** 767.32 (1) (b) 6. of the statutes is created to read:

9 767.32 (1) (b) 6. The amount of child support last ordered by the court was  
10 based on the amount of physical placement awarded to the parties and the payer has  
11 consistently failed to exercise his or her periods of physical placement, if the amount  
12 of child support under the revised order, based on the actual amount of physical  
13 placement that the payer has in the past exercised, will differ from the amount under  
14 the last order by at least 15%<sup>✓</sup> of the amount under the last order or by at least \$60<sup>✓</sup>  
15 per month.

16 **SECTION 29.** 767.32 (2) of the statutes is renumbered 767.32 (2) (a) and  
17 amended to read:

18 767.32 (2) (a) Except as provided in sub. (2m) or (2r), if the court revises a  
19 judgment or order with respect to child support payments, it shall do so by using the  
20 ~~percentage standard established by the department under s. 49.22 (9)~~ method under  
21 s. 767.251<sup>✓</sup>.

22 **SECTION 30.** 767.32 (2) (b) of the statutes is created to read:

23 767.32 (2) (b) In determining the amount of physical placement that each  
24 parent has for purposes of calculating child support under s. 767.251, the court shall  
25 use the actual time that a child regularly spends with each parent, regardless of the



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## SECTION 30

1 allocation of physical placement between the parents under a physical placement  
2 order.

3 **SECTION 31.** 767.32 (2m) of the statutes is amended to read:

4 767.32 (2m) Upon request by a party, the court may modify the amount of  
5 revised child support payments determined under sub. (2) if, after considering the  
6 factors listed in s. 767.25 (1m), the court finds, by the greater weight of the credible  
7 evidence, that the use of the <sup>plain</sup> ~~percentage standard~~ method of calculating child support  
8 under s. 767.251 is unfair to the child or to any of the parties.

9 **SECTION 32.** 767.325 (5r) of the statutes is created to read:

10 767.325 (5r) <sup>✓</sup> DELAY IF MODIFICATION SOUGHT IN RESPONSE TO CHILD SUPPORT  
11 MODIFICATION. (a) Except as provided in <sup>✓</sup> par. (b), if the court determines that a  
12 petition, motion, or order to show cause to modify a physical placement order is filed  
13 under this section <sup>✓</sup> in response to a petition, motion, or order to show cause filed under  
14 s. 767.32 <sup>✓</sup> to revise a judgment or order with respect to an amount of child support,  
15 the court may not hear or make a determination on the petition, motion, or order to  
16 show cause filed under this section until at least 30 days after the signing of the order  
17 related to the petition, motion, or order to show cause to revise child support.

18 (b) The delay requirement under par. (a) <sup>✓</sup> does not apply if the party seeking to  
19 modify the physical placement order presents any credible evidence that the current  
20 allocation of physical placement will cause irreparable harm to the child.

21 **SECTION 33.** 767.45 (7) of the statutes is amended to read:

22 767.45 (7) The clerk of court shall provide without charge, to each person  
23 bringing an action under this section, except to the state under sub. (1) (g) or <sup>✓</sup> (h), (6),  
24 (6m), or <sup>✓</sup> (6r), a document setting forth the ~~percentage standard~~ established by the

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1 ~~department under s. 49.22 (9) method of calculating child support under s. 767.251~~  
2 and listing the factors ~~which~~ that a court may consider under s. 767.25 (1m).

3 SECTION 34. 767.455 (6) of the statutes is amended to read:

4 767.455 (6) DOCUMENT. The summons served on the respondent shall be  
5 accompanied by a document, provided without charge by the clerk of court, setting  
6 forth the ~~percentage standard established by the department under s. 49.22 (9)~~  
7 method of calculating child support under s. 767.251 and listing the factors which  
8 that a court may consider under s. 767.25 (1m).

9 SECTION 35. 767.477 (2) of the statutes is amended to read:

10 767.477 (2) Before making any temporary order under sub. (1), the court shall  
11 consider those factors that the court is required to consider when granting a final  
12 judgment on the same subject matter. If the court makes a temporary child support  
13 order that deviates from the amount of support that would be required by using the  
14 ~~percentage standard established by the department under s. 49.22 (9) method of~~  
15 calculating child support under s. 767.251, the court shall comply with the  
16 requirements of s. 767.25 (1n).

17 SECTION 36. 938.30 (6) (b) of the statutes is amended to read:

18 938.30 (6) (b) If it appears to the court that disposition of the case may include  
19 placement of the juvenile outside the juvenile's home, the court shall order the  
20 juvenile's parent to provide a statement of income, assets, debts, and living expenses  
21 to the court or the designated agency under s. 938.33 (1) at least 5 days before the  
22 scheduled date of the dispositional hearing or as otherwise ordered by the court. The  
23 clerk of court shall provide, without charge, to any parent ordered to provide a  
24 statement of income, assets, debts, and living expenses a document setting forth the  
25 ~~percentage standard established by the department of workforce development under~~

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## SECTION 36

1 s. ~~49.22~~ (9) method of calculating child support under s. 767.251 and listing the  
2 factors that a court may consider under s. 301.12 (14) (c).

3 **SECTION 37.** 938.31 (7) (b) of the statutes is amended to read:

4 938.31 (7) (b) If it appears to the court that disposition of the case may include  
5 placement of the juvenile outside the juvenile's home, the court shall order the  
6 juvenile's parent to provide a statement of income, assets, debts, and living expenses  
7 to the court or the designated agency under s. 938.33 (1) at least 5 days before the  
8 scheduled date of the dispositional hearing or as otherwise ordered by the court. The  
9 clerk of court shall provide, without charge, to any parent ordered to provide a  
10 statement of income, assets, debts, and living expenses a document setting forth the  
11 ~~percentage standard established by the department of workforce development under~~  
12 s. ~~49.22~~ (9) method of calculating child support under s. 767.251✓ and listing the  
13 factors that a court may consider under s. 301.12 (14) (c).

14 **SECTION 38.** 938.33 (4m) (intro.) of the statutes is amended to read:

15 938.33 (4m) SUPPORT RECOMMENDATIONS; INFORMATION TO PARENTS. (intro.) In  
16 making a recommendation for an amount of child support under sub. (3) or (4), the  
17 agency shall consider the factors that the court considers under s. 301.12 (14) (c) for  
18 deviation from the ~~percentage standard~~ method of calculating child support under  
19 s. ~~767.251~~✓ At or before the dispositional hearing under s. 938.335, the agency shall  
20 provide the juvenile's parent with all of the following:

21 **SECTION 39.** 938.357 (5m) (a) of the statutes is amended to read:

22 938.357 (5m) (a) If a proposed change in placement changes a juvenile's  
23 placement from a placement in the juvenile's home to a placement outside the  
24 juvenile's home, the court shall order the juvenile's parent to provide a statement of  
25 income, assets, debts, and living expenses to the court or the person or agency

## ASSEMBLY BILL 449

PwF

1 primarily responsible for implementing the dispositional order by a date specified by  
2 the court. The clerk of court shall provide, without charge, to any parent ordered to  
3 provide a statement of income, assets, debts, and living expenses a document setting  
4 forth the ~~percentage standard established by the department of workforce~~  
5 ~~development under s. 49.22 (9)~~ method of calculating child support under s. 767.251  
6 and listing the factors that a court may consider under s. 301.12 (14) (c). If the  
7 juvenile is placed outside the juvenile's home, the court shall determine the liability  
8 of the parent in the manner provided in s. 301.12 (14).

9 ~~SECTION 40.~~ 938.363 (1) (c) of the statutes is amended to read:

10 938.363 (1) (c) If the proposed revision is for a change in the amount of child  
11 ~~support to be paid by a parent, the court shall order the juvenile's parent to provide~~  
12 ~~a statement of income, assets, debts, and living expenses to the court and the person~~  
13 ~~or agency primarily responsible for implementing the dispositional order by a date~~  
14 ~~specified by the court. The clerk of court shall provide, without charge, to any parent~~  
15 ~~ordered to provide a statement of income, assets, debts, and living expenses a~~  
16 ~~document setting forth the percentage standard established by the department of~~  
17 ~~workforce development under s. 49.22 (9)~~ method of calculating child support under  
18 s. 767.251 and listing the factors that a court may consider under s. 46.10 (14) (c).

19 SECTION 41. 948.22 (4) (b) of the statutes is amended to read:

20 948.22 (4) (b) For a person not subject to a court order requiring child,  
21 grandchild, or spousal support payments, when the person knows or reasonably  
22 should have known that he or she has a dependent, failure to provide support equal  
23 to at least the amount established by rule ~~by the department of workforce~~  
24 ~~development under s. 49.22 (9)~~ the method of calculating child support under s.

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## ASSEMBLY BILL 449

## SECTION 41

1 767.251<sup>✓</sup> or causing a spouse, grandchild, or child to become a dependent person, or  
2 continue to be a dependent person, as defined in s. 49.01 (2).

3 **SECTION 42.** 948.22 (7) (bm) of the statutes is amended to read:

4 948.22 (7) (bm) Upon request, the court may modify the amount of child or  
5 spousal support payments determined under par. (b) 2. if, after considering the  
6 factors listed in s. 767.25 (1m), regardless of the fact that the action is not ~~one for a~~  
7 ~~determination of paternity~~ or an action specified in s. 767.25 (1), the court finds, by  
8 the greater weight of the credible evidence, that the use of the ~~percentage standard~~  
9 method of calculating child support under s. 767.251<sup>✓</sup> is unfair to the child or to either  
10 of the child's parents.

11 **SECTION 43. Initial applicability.**

12 (1) This act first applies to actions or proceedings, including actions or  
13 proceedings to enforce or modify a judgment or order previously granted, that are  
14 commenced on the effective date of this subsection.<sup>✓</sup>

15 (END)

**2003-2004 DRAFTING INSERT**  
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**LEGISLATIVE REFERENCE BUREAU**

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**INSERT 5-10**

✓

1           **SECTION 1.** 46.10 (14) (b) of the statutes is amended to read:

2           46.10 (14) (b) Except as provided in par. (c) and subject to par. (cm), liability

3           of a parent specified in sub. (2) or s. 46.03 (18) for the care and maintenance of the

4           parent's minor child who has been placed by a court order under s. 48.355 or 48.357

5           in a residential, nonmedical facility such as a group home, foster home, treatment

6           foster home, or residential care center for children and youth shall be determined by

7           the court by using the ~~percentage standard established by the department of~~

8           ~~workforce development under s. 49.22 (9)~~ method of calculating child support under

9           s. 767.251 and by applying the ~~percentage standard~~ method in the manner

10          established by the department under s. 46.247.

History: 1971 c. 125; 1971 c. 213 s. 5; 1973 c. 90 ss. 223, 223m, 560 (3); 1973 c. 198, 333; 1975 c. 39 ss. 347 to 350, 734; 1975 c. 41, 94; 1975 c. 189 s. 99 (2); 1975 c. 198, 199, 224; 1975 c. 413 s. 18; 1975 c. 428; 1975 c. 430 ss. 6, 80; 1977 c. 29, 203; 1977 c. 418 ss. 294 to 295, 924 (50), 929 (18); 1977 c. 428; 1977 c. 447 s. 206; 1977 c. 449 ss. 75, 497; 1979 c. 34; 1979 c. 102 ss. 236 (4), 237; 1979 c. 117, 221, 331; 1981 c. 20 ss. 755 to 758, 2202 (20) (i), (n); 1981 c. 81; 1983 a. 27 ss. 955m, 2202 (20); 1985 a. 29, 176, 281, 332; 1987 a. 307; 1989 a. 31, 56, 96, 212; 1991 a. 39, 221, 315, 316; 1993 a. 16, 27, 385, 437, 446, 479, 481; 1995 a. 27 ss. 2054, 2055, 9130 (4); 1995 a. 77, 224, 404; 1997 a. 3, 27, 35, 237, 308; 1999 a. 9, 103; 2001 a. 16, 59, 103.

(END OF INSERT 5-10)

**INSERT 10-12**

✓

11          **SECTION 2.** 301.12 (14) (b) of the statutes is amended to read:

12          301.12 (14) (b) Except as provided in par. (c) and subject to par. (cm), liability

13          of a parent specified in sub. (2) or s. 301.03 (18) for the care and maintenance of the

14          parent's minor child who has been placed by a court order under s. 938.183, 938.355,

15          or 938.357 in a residential, nonmedical facility such as a group home, foster home,

16          treatment foster home, residential care center for children and youth, or juvenile

17          correctional institution shall be determined by the court by using the percentage

18          ~~standard established by the department of workforce development under s. 49.22 (9)~~

↓

*ins 10-12 cont'd*

1 method of calculating child support under s. 767.251 and by applying the percentage  
2 standard method in the manner established by the department under par. (g).

History: 1995 a. 27 ss. 6361, 9126 (19); 1995 a. 77; 1997 a. 237; 1999 a. 103; 2001 a. 59.

(END OF INSERT 10-12)

INSERT 12-16

3 **SECTION 3.** 767.23 (1n) of the statutes is amended to read:

4 767.23 (1n) Before making any temporary order under sub. (1), the court or  
5 circuit court commissioner shall consider those factors that the court is required by  
6 this chapter to consider before entering a final judgment on the same subject matter.  
7 In making a determination under sub. (1) (a) or (am), the court or circuit court  
8 commissioner shall consider the factors under s. 767.24 (5). If the court or circuit  
9 court commissioner makes a temporary child support order that deviates from the  
10 amount of support that would be required by using the ~~percentage standard~~  
11 ~~established by the department under s. 49.22 (9)~~ method of calculating child support  
12 under s. 767.251, the court or circuit court commissioner shall comply with the  
13 requirements of s. 767.25 (1n). A temporary order under sub. (1) may be based upon  
14 the written stipulation of the parties, subject to the approval of the court or circuit  
15 court commissioner. Temporary orders made by a circuit court commissioner may be  
16 reviewed by the court.

History: 1971 c. 149; 1971 c. 211 s. 126; 1971 c. 220, 307; 1975 c. 283; Sup. Ct. Order, 73 Wis. 2d xxxi (1976); 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 111, 196;  
1979 c. 352 s. 39; Stats. 1979 s. 767.23; 1983 a. 27; 1983 a. 204 s. 22; 1983 a. 447; 1985 a. 29 s. 3202 (9); 1987 a. 355, 364, 413; 1989 a. 212; 1991 a. 39; 1993 a. 78, 481, 490;  
1995 a. 27 ss. 7100h, 9126 (19); 1995 a. 70, 404; 1999 a. 9; 2001 a. 16, 61.

(END OF INSERT 12-16)

INSERT 22-20

~~(END OF INSERT 22-20)~~

17 **SECTION 4.** 767.33 (1) (a) of the statutes is amended to read:

*↓*

*Ins 22-20 contd*

1           767.33 (1) (a) An order for child or family support under this chapter may  
2 provide for an annual adjustment in the amount to be paid based on a change in the  
3 payer's income if the amount of child or family support is expressed in the order as  
4 a fixed sum and based on the <sup>✓</sup>~~percentage standard established by the department~~  
5 ~~under s. 49.22 (9) method of calculating child support under s. 767.251.~~ No  
6 adjustment may be made under this section unless the order provides for the  
7 adjustment.

History: 1981 c. 20; 1983 a. 27; 1993 a. 481; 1995 a. 27 s. 9126 <sup>✓</sup>(19); 1995 a. 404; 1997 a. 27; 2001 a. 16, 61, 105.

8           **SECTION 5.** 767.33 (1) (b) of the statutes is amended to read:

9           767.33 (1) (b) An adjustment under this section may not be made more than  
10 once in a year and shall be determined on the basis of the ~~percentage standard~~  
11 ~~established by the department under s. 49.22 (9) method of calculating child support~~  
12 ~~under s. 767.251.~~ <sup>✓</sup>

*(end of Ins 22-20)* History: 1981 c. 20; 1983 a. 27; 1993 a. 481; 1995 a. 27 s. 9126 (19); 1995 a. 404; 1997 a. 27; 2001 a. 16, 61, 105.

**INSERT 25-18**

13           **SECTION 6.** 938.363 (1) (c) <sup>✓</sup>of the statutes is amended to read:

14           938.363 (1) (c) If the proposed revision is for a change in the amount of child  
15 support to be paid by a parent, the court shall order the juvenile's parent to provide  
16 a statement of income, assets, debts, and living expenses to the court and the person  
17 or agency primarily responsible for implementing the dispositional order by a date  
18 specified by the court. The clerk of court shall provide, without charge, to any parent  
19 ordered to provide a statement of income, assets, debts, and living expenses a  
20 document setting forth the ~~percentage standard established by the department of~~

*↓*



*Ins 25-18 contd*

- 1 ~~workforce development under s. 49.22 (9)~~ <sup>✓</sup> method of calculating child support under
- 2 s. 767.251 and listing the factors that a court may consider under s. 301.12 (14) (c).

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 275; 1997 a. 35, 80, 237, 252; 1999 a. 103; 2001 a. 38, 109.

(END OF INSERT 25-18)

1107  
for 12

## Revisions to AB-449 (12/09/02)

1. MODIFY SECTION 11. By adding 4 years to the dates noted and change the reference from the secretary to Joint Legislative Council.

2. MODIFY SECTION 23. To read as follows: (new or modified provisions are underlined.)

### 767.251 Calculation of child support payments.

#### (1) GROSS INCOME.

For purposes of determining a parent's gross income under this section, all of the following apply

(a) The court shall include as income all of the following:

1. Subject to par. (b), all personal income considered gross income for federal income tax purposes.
2. Net proceeds from worker's compensation or other personal injury awards intended to replace income.
3. Income continuation benefits.
4. Voluntary deferred compensation or employee contributions to a profit-sharing or pension account.
5. Military allowances and veterans benefits.
6. Undistributed income from a closely held corporation if all of the following apply:
  - a. The parent has a majority interest in the corporation.
  - b. The parent may exercise control over, or access the earnings of the corporation.
7. Tax-exempt interest.

(b) The court shall exclude from income all of the following:

1. Onetime long-term capital gain income from the sale of individual passive investments.
2. Onetime capital gain income from the sale of the family home.

(c) The court shall subtract from income all of the following:

1. Any maintenance paid to the other parent or to a former spouse.
2. If the parent is self-employed, one-half of the unemployment tax that the parent pays.
3. Business expenses that are allowed as deductions for expenses for tax purposes.
4. Business expenses that are not allowed as deductions for expenses for tax purposes but that the court considers necessary for the production of income.

(d) The court shall include as income wages paid by the parent to a member of the parent's household that the court determines were paid for the purpose of diverting income to avoid paying child support.

(e) If the court determines that a party has encumbered, concealed, damaged, destroyed, transferred or otherwise disposed of property for the purpose of avoiding payment of child support, or that child support based on the gross incomes of the parties will not adequately provide for the child and that the parties have nonproductive assets, the court may impute income to one or both parents from such property or assets by multiplying the value of the property or asset by the current 6-month treasury bill interest rate and including the amount obtained in the gross income of the appropriate parent.

(f) If the court determines that a parent is able and available to work, that employment opportunities exist in the parent's community for which the parent is qualified and that the parent is not working at least 40 hours per week, the court shall impute to the parent a gross income based on a 40-hour work week, the parent's educational attainment and work experience and the type of employment opportunities in the parent's community for which the parent is qualified.

#### (2) AMOUNT OF PHYSICAL PLACEMENT.

(a) For the purpose of determining child support payments under sub. (4), the court shall determine the amount of physical placement that a parent has on the basis of the number of overnights or equivalent care, out of a total of 365 overnights in a year, that the parent provides care for the child.

(b) For the purpose of this section "equivalent care" means a period of time during which the parent cares for the child that is not overnight, but is determined by the court to require the parent to assume support costs that are substantially equivalent to what the parent would spend to care for the child overnight.

(c) After making any adjustments necessary to ensure that the total number of overnights or equivalent care in a year that the parents have physical placement of the child equals 365, the court shall determine the percentage of the 365 overnights in a year that each parent has physical placement of the child, and shall make any adjustments necessary to ensure that the total of those percentages equals 100%.

#### (3) GROSS MONTHLY CHILD SUPPORT OBLIGATIONS.

For the purpose of determining child support payments under sub. (4), the court shall determine each parent's gross monthly child support obligation as follows:

(a) If the combined gross monthly income of the 2 parents is equal to or less than \$4,000, the gross monthly child support obligation of each parent equals the following percentage of that parent's gross monthly income:

1. If there is one minor child, 17%.

2. If there are 2 minor children, 25%.
3. If there are 3 minor children, 29%.
4. If there are 4 minor children, 31%.
5. If there are 5 or more minor children, 34%.

(b) If the combined gross monthly income of the 2 parents is greater than \$4,000 but not greater than \$20,000, the gross monthly child support obligation of each parent is calculated as follows:

1. The combined gross monthly child support obligation of the 2 parents equals the following amount:
  - a. If there is one minor child, \$ 680 plus 8.5% of the combined gross monthly income of the 2 parents in excess of \$4,000.
  - b. If there are 2 minor children, \$1,000 plus 12.5% of the combined gross monthly income of the 2 parents in excess of \$4,000.
  - c. If there are 3 minor children, \$1,160 plus 14.5% of the combined gross monthly income of the 2 parents in excess of \$4,000.
  - d. If there are 4 minor children, \$1,240 plus 15.5% of the combined gross monthly income of the 2 parents in excess of \$4,000.
  - e. If there are 5 or more minor children, \$1,360 plus 17% of the combined gross monthly income of the 2 parents in excess of \$4,000.

2. The gross monthly child support obligation of each parent equals that parent's percentage of the combined gross income of the 2 parents multiplied by the applicable combined gross monthly child support obligation amount under subd. 1.

(c) If the combined gross monthly income of the 2 parents is greater than \$20,000, the gross monthly child support obligation of each parent is calculated as follows:

1. The combined gross monthly child support obligation of the 2 parents equals the following amount:
  - a. If there is one minor child, \$2,040 plus 4% of the combined gross monthly income of the 2 parents in excess of \$20,000.
  - b. If there are 2 minor children, \$3,000 plus 6% of the combined gross monthly income of the 2 parents in excess of \$20,000.
  - c. If there are 3 minor children, \$3,480 plus 7% of the combined gross monthly income of the 2 parents in excess of \$20,000.
  - d. If there are 4 minor children, \$3,720 plus 8% of the combined gross monthly income of the 2 parents in excess of \$20,000.
  - e. If there are 5 or more minor children, \$4,080 plus 9% of the combined gross monthly income of the 2 parents in excess of \$20,000.

2. The gross monthly child support obligation of each parent equals that parent's percentage of the combined gross income of the 2 parents multiplied by the applicable combined gross monthly child support obligation amount under subd. 1.

(d) Notwithstanding pars. (a), (b) and (c), if a parent is subject to another child support order or is otherwise legally obligated to support one or more other children, that parent's gross monthly child support obligation is the amount determined for that parent under par. (a), (b) or (c), reduced by the following percentage:

1. If the number of other children the parent is obligated to support is one, 90%.
2. If the number of other children the parent is obligated to support is 2, 85%.
3. If the number of other children the parent is obligated to support is 3, 80%.
4. If the number of other children the parent is obligated to support is 4 or more, 75%.

#### (4) AMOUNT OF PAYMENTS.

The court shall determine child support payments as follows:

##### (a) In sole placement cases.

If the court grants periods of physical placement to only one parent, or if the court grants periods of physical placement to both parents but one parent has physical placement of the child for fewer than 92 overnights or equivalent care in a year, the parent with less or no physical placement shall pay to the other parent the gross monthly child support obligation determined for that payer parent under sub. (3).

##### (b) In shared placement cases.

If the court grants periods of physical placement to both parents and each parent has physical placement of the child for at least 92 overnights or equivalent care in a year, the court shall determine child support payments in the following manner:

1. Each parent's gross monthly child support obligation determined under sub. (3) shall be multiplied by 1.5 and by the other parent's percentage of physical placement determined under sub. (2) (c). The product under this subdivision for each parent is that parent's net monthly child support obligation.

2. Except as provided in subd. 3., the parent with the greater net monthly child support obligation under subd. 1. shall pay as child support, to the parent with the smaller net monthly child support obligation under subd. 1., the difference between those net monthly child support obligations.

3. If the amount of child support that a parent is obligated to pay under subd. 2. is greater than his or her gross monthly child support obligation determined under sub. (3), that parent shall pay as child support to the other parent the amount of his or her gross monthly child support obligation determined under sub. (3).

4. In an order of child support based on this shared placement formula, the court shall order each parent to pay the day to day expenses of the child during his or her placement periods and to share the reasonable variable expenses of the child (such as school books, activity fees, clothing, tuition etc.) in proportion to the amount of placement each parent has the child

##### (c) In 3rd party placement cases.

If a child is placed outside his or her home in a residential, nonmedical facility, the child support obligation of each parent shall be as determined under sub. (3).

**(d) In split placement cases.**

If there is more than one child, if the amount of physical placement that a parent has with one or more of the children is not the same as the amount that the parent has with one or more of the other children and if the court determines that each parent is required to pay child support to the other parent under par. (a) or (b) 2. or 3., the court shall require only the parent who is required to pay the greater amount to pay child support, and to pay only the difference in the amounts, to the other parent.

**(5) CHILD-DAY CARE, MEDICAL EXPENSES:**

In addition to the payments defined under sub. (4), the court shall assign responsibility for payment of reasonable child day care expenses necessary to allow a parent to work or attend school and the cost of health insurance premiums and medical expenses not covered by insurance, in proportion to each parent's share of the combined gross income of the 2 parents as defined under sub (1).

✓ 3. MODIFY SECTION 25.      Change 10% to 20%, and \$40 to \$60.

✓ 4. DELETE SECTIONS 28, 30, 32.